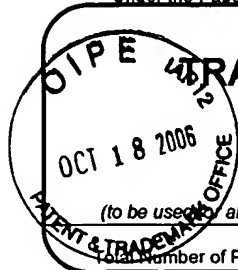


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Application Number

10/036,815

Filing Date

10/19/2001

First Named Inventor

Wayne E. Fisher

Art Unit

2163

Examiner Name

Uyen T. Le

Attorney Docket Number

39802-P005US (f/k/a M-11460US)

ENCLOSURES (Check all that apply)

<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
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<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input type="checkbox"/> Status Letter
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<input type="checkbox"/> Reply to Missing Parts/ Incomplete Application	<input type="text"/> Remarks	
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Winstead Sechrest & Minick P.C.		
Signature	<i>Michael Adams</i>		
Printed name	Michael P. Adams		
Date	October 16, 2006	Reg. No.	34,763

CERTIFICATE OF TRANSMISSION/MAILING

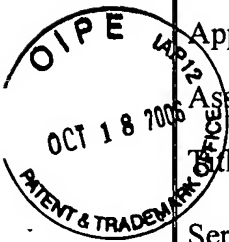
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Signature	<i>Michael Adams</i>		
Typed or printed name	Michael P. Adams	Date	October 16, 2006

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES



Applicant(s): Fisher, Wayne E.
Assignee: NEON Enterprise Software, Inc.
Title: Ensuring That A Database And Its Description Are Synchronized
Serial No.: 10/036,815 Filing Date: October 19, 2001
Examiner: Uyen T. Le Group Art Unit: 2163
Docket No.: 39802-P005US Confirmation No.: 4940
(f/k/a M-11460 US)

Dallas, Texas
October 16, 2006

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SECOND AMENDED APPEAL BRIEF
RESPONSIVE TO NON-COMPLIANCE DATED 9/14/2006

I. REAL PARTY-IN-INTEREST

The real party in interest is the assignee, NEON Enterprise Software, Inc. (f/k/a Peregrine Bridge Transfer Corporation), as named in the caption above. Appellant also attaches hereto as Exhibit A, a copy of the Notice of Recordation of Assignment Document, making a Patent Office recordation date of July 1, 2004 and a mailing date of January 5, 2005, recording a patent name change, which reflects that NEON Enterprise Software, Inc. is the current assignee.

II. RELATED APPEALS AND INTERFERENCES

Based on information and belief, there are no appeals or interferences known to Appellant, the Appellant's legal representative, or assignee that could directly affect or be directly affected by or have a bearing on the decision by the Board of Patent Appeals in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-18 are pending in the application. Claims 1-18 stand rejected. Claims 1-18 are appealed.

IV. STATUS OF AMENDMENTS

In an Office Action dated April 21, 2004, claims 1-18 were first rejected under either 35 U.S.C. § 102(e) or 35 U.S.C. § 103 as being unpatentable over Kim et al. (US 2002/0059279). In response to Appellant's Response to Office Action dated September 21, 2004, claims 1-18 were then rejected under 35 U.S.C. § 101, in a January 27, 2005 Office Action. In a May 27, 2005 Response to Office Action, Appellant's amended claims 1, 2 and 9. Next, in the Examiner's Final Office Action, dated August 26, 2005, claims 1-18 were rejected under: (i) 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement; and (ii) 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,745,748 to Ahmad et al. ("*Ahmad*").

V. SUMMARY OF CLAIMED SUBJECT MATTER

General Background

The present invention relates to a method of verifying that the correct IMS control blocks are used when processing an IMS database.

As is well known in the art, prior to loading an IMS database there are a number of administrative functions which must be performed. One of those functions is the creation of a description of the proposed database. This description is referred to as a Data Base Description (DBD). The database description may also be referred to as the database definition. The DBD contains a number of source statements which describe the physical characteristics of the database. These source statements must be assembled and link edited, and the resulting load module is placed into a DBD library. Subsequently, the DBD may be converted into a Data Management Block

(DMB), by the IMS-provided ACB Generation utility program. As illustrated in Figs. 10 and 11, the resulting DMB is stored in an ACB library.

The actual loading of user data into a database is initiated and under the control of a load program 94, such as a user-written load program or the IMS-provided HD Reorganization Reload utility program. In either case, when initially invoked the IMS software will extract the specified DBD from a DBD library and convert it into a DMB (not shown), or extract the DMB 90 from a ACB library 92 (*see* Fig. 10) and place DMB into DMB pool 96. In Fig. 10, the DMB in buffer pool 96 is identified by reference numeral 98. The DMB is the control block which IMS uses to manage the loading of user data into an IMS database. It is also the control block used to subsequently process the database. It is the user's responsibility to provide the DMB for IMS to use. IMS has no way of knowing if the DMB used to create the database is identical to the DMB which should be used to subsequently process the database. If they are different (i.e., not synchronized), the integrity of the database is at risk. *See* Specification, P. 18, line 27 - P. 20, line 15.

Subject Matter Specifically Defined in Independent Claim 1

Claim 1 is directed to a method of ensuring that an IMS database and a description for said IMS database are synchronized. The description is originally stored in a data management block (DMB) 98. *See* Figs. 10-11; Specification P. 18, line 27 – P. 20, line 15. The method comprises storing a copy of the description 106 (Fig. 10) in the database 104. The database 104 comprises a first portion and a second portion, and description 106 is stored within database 104 in a first portion of the database (e.g., as one or more database records, such as the first records of the database). P. 19, line 23 – P. 20, line 2. As illustrated in Fig. 11, before the second portion (e.g., the remaining records) of database 104 is accessed, description 106 is compared to the description originally stored in DMB 98. It is determined if description 106 and description in DMB 98 are synchronized. *See* Specification, P. 20, lines 3 – 15.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 1-18 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

2. Claims 1-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,745,748 to Ahmad et al. ("*Ahmad*").

VII. ARGUMENT

A. Claims 1-18 comply with 35 U.S.C. § 112, First Paragraph

Appellant's originally filed independent claim 1 sets forth "storing a copy of said description [for said IMS database] . . . within said database" and "before accessing said database, comparing said copy of the said description with said description stored in said data management block." See originally filed claim 1. In response to the Examiner's rejection of the claims under 35 U.S.C. § 101, Appellant amended the above quoted language in claim 1 to state: "storing a copy of said description [for said IMS database] . . . within said first portion of said database" and "before accessing said second portion of said database, comparing said copy of the said description with said description stored in said data management block." See originally filed claim 1. In the Examiner's Final Office action, the Examiner states that the claims fail to comply with the written description requirement, arguing that "the description does not discuss the first and second portion of an IMS database now being claimed." For the reasons discussed below, Appellant respectfully disagrees.

Section 2163.02 of the MPEP states the following:

The courts have described the essential question to be addressed in a description requirement issue in a variety of ways. An objective standard for determining compliance with the written description requirement is, "does the description clearly allow persons of ordinary skill in the art to recognize that he or she invented what is claimed." *In re Gosteli*, 872 F.2d 1008, 1012, 10 USPQ2d 1614, 1618 (Fed. Cir. 1989). Under *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991), to satisfy the written description

requirement, an applicant must convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention, and that the invention, in that context, is whatever is now claimed. The test for sufficiency of support in a parent application is whether the disclosure of the application relied upon "reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter." *Ralston Purina Co. v. Far-Mar-Co., Inc.*, 772 F.2d 1570, 1575, 227 USPQ 177, 179 (Fed. Cir. 1985) (quoting *In re Kaslow*, 707 F.2d 1366, 1375, 217 USPQ 1089, 1096 (Fed. Cir. 1983)).

...

The subject matter of the claim need not be described literally (i.e., using the same terms or in *haec verba*) in order for the disclosure to satisfy the description requirement.

Appellant notes that the application does reasonably convey to an artisan that the description for the IMS database can be stored in a first portion of the database which is separate from a second portion of the database. Specifically, the application states: "The DMB¹ is stored within the database as one or more database records *and assigned a unique location, such as the first records of the database.*" P. 19, line 23 – p. 20, line 2. Thus, the application reasonably conveys to persons of ordinary skill in the art that the description for the IMS database can be stored in a first portion of the database (e.g., "the first records of the database") which is separate from a second portion of the database (e.g., the other records of the database). Thus, claims 1-18 clearly satisfy the written description requirement.

B. Claims 1-18 are not properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Ahmad

The Examiner further rejected claims 1-18 under 35 U.S.C. 103(a) as being unpatentable over *Ahmad*. Appellant submits that claims 1-18 are allowable over *Ahmad* for at least the reasons discussed below. Appellant respectfully submits that the Examiner has not met the Examiner's burden of factually supporting a *prima facie* conclusion of obviousness.

¹ Independent claim 1 states that the description for said IMS database is stored in a data management block (DMB).

It is the Examiner's burden to factually support any *prima facie* conclusion of obviousness. The Examiner's duty may not be satisfied by engaging in impermissible hindsight; any conclusion of obviousness must be reached on the basis of facts gleaned from the prior art. See MPEP §§ 2141-2144.

In a recent decision from the United States Court of Appeals for the Federal Circuit, the Federal Circuit noted that when the patent examiner and Board "rely on what they assert to be general knowledge to negate patentability, that knowledge must be articulated and placed on the record." *In re Sang-Su Lee*, 277 F.3d 1338, 1345 (Fed. Cir. 2002). Specifically, the Federal Circuit noted that conclusory and subjective opinions about what is "basic knowledge" or "common sense" by themselves do not adequately support a determination of unpatentability. See *Id.* at 1343-44. Thus, the Federal Circuit held that findings of obviousness based on "common knowledge" must be supported by documented evidence that such knowledge exists. See *Id.* at 1344-45.

The Examiner admits that *Ahmad* does not teach several elements of the pending claims. Here, the Examiner has only offered conclusory and subjective opinions that these claim elements not taught by *Ahmad* would have been "obvious" or "well-known." The Examiner has not supported such statements with documented evidence, as he was required to do. Accordingly, the claims rejected under § 103 are allowable over *Ahmad* for at least this reason.

Furthermore, the Examiner only cites to Column 6, lines 6-38 of *Ahmad* as supposedly teaching the claimed invention of claims 1-18. The Examiner admits that *Ahmad* does not teach several of the claimed elements. However, the Examiner has not provided sufficient evidence that *Ahmad* teaches at least one other fundamental limitation of Appellant's claims: storing a copy of said description for said IMS database within the database (*see* claim 1). Not only does the Examiner not provide sufficient evidence for this limitation, the excerpt in *Ahmad* cited by the Examiner teaches away from this limitation. *Ahmad* describes the database description being stored in auxiliary files

separate from the database:

Accessing IMS or other database data often requires reference to auxiliary files containing information about the data. In the IMS environment, a Database Description (DBD) describes the physical structure of the data.

Col. 6, lines 15-19. Thus, this is an additional significant reason that independent claim 1 and dependent claims 2-18 are patentable over *Ahmad*.

CONCLUSION

For the above reasons, Appellant respectfully submits that rejection of pending Claims 1-18 is unfounded. Accordingly, Appellant requests that the rejection of Claims 1-18 be reversed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. Michael Adams", is written over the typed name.

Michael P. Adams
Attorney for Applicant(s)
Reg. No. 34,763
512.370.2858

Winstead Sechrest & Minick P.C.
P.O. Box 50784
Dallas, TX 75201

CLAIMS APPENDIX

1. A method of ensuring that an IMS database and a description for said IMS database, are synchronized, wherein said description is stored in a data management block, and wherein said database comprises a first portion and second portion, the method comprising:
storing a copy of said description, used to load said database, within said first portion of said database, wherein said copy is maintained in said database;
before accessing said second portion of said database, comparing said copy of the said description with said description stored in said data management block; and
determining whether said copy of said description and said description stored in said data management block are synchronized.
2. The method of claim 1, wherein said comparing step occurs before each access to said second portion of said database.
3. The method of claim 1, wherein said copy of the database description is stored within said database as one or more database records.
4. The method of claim 3, wherein said one or more database records are stored in said database in a unique location which is dependent on said database's organization.
5. The method of claim 1, further comprising the step of taking responsive action if said copy of the description and said description stored in said data management block are not synchronized.
6. The method of claim 5, wherein said responsive action includes alerting a user of a problem with said description.
7. The method of claim 5, wherein said responsive action includes suspending further activity with regard to said database.
8. The method of claim 7, wherein said further activity is suspended until said descriptions become synchronized.

9. The method of claim 5, wherein said comparing step occurs before each access to said second portion of said database.

10. The method of claim 5, wherein said copy of the database description is stored within said database as one or more database records.

11. The method of claim 10, wherein said one or more database records are stored in said database in a unique location which is dependent on said database's organization.

12. The method of claim 9, wherein said responsive action includes alerting a user of a problem with said description.

13. The method of claim 9, wherein said responsive action includes suspending further activity with regard to said database.

14. The method of claim 13, wherein said further activity is suspended until said descriptions become synchronized.

15. The method of claim 10, wherein said responsive action includes alerting a user of a problem with said description.

16. The method of claim 10, wherein said responsive action includes suspending further activity with regard to said database.

17. The method of claim 16, wherein said further activity is suspended until said descriptions become synchronized.

18. A program storage media readable by a machine and containing instructions for performing the method contained in claim 1.

EVIDENCE APPENDIX

No evidence was submitted pursuant to §§1.130, 1.131, or 1.132 of 37 C.F.R. or of any other evidence entered by the Examiner and relied upon by Appellant in the Appeal.

RELATED PROCEEDINGS APPENDIX

There are no related proceedings to the current proceeding.

EXHIBIT

A



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

JANUARY 05, 2005

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WINSTEAD SECHREST & MINICK P.C.
MICHAEL P. ADAMS
P.O. BOX 50784
DALLAS, TX 75201

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RECORDATION DATE: 07/01/2004

REEL/FRAME: 015519/0455
NUMBER OF PAGES: 3

BRIEF: CHANGE OF NAME (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:

PEREGRINE BRIDGE TRANSFER
CORPORATION

DOC DATE: 08/16/2002

ASSIGNEE:

NEON ENTERPRISE SOFTWARE, INC.
14100 SOUTHWEST FREEWAY
SUITE 400
SUGARLAND, TEXAS 77478

SERIAL NUMBER: 10036815

FILING DATE: 10/19/2001

PATENT NUMBER:

ISSUE DATE:

TITLE: ENSURING THAT A DATABASE AND ITS DESCRIPTION ARE SYNCHRONIZED

015519/0455 PAGE 2

MARCUS KIRK, EXAMINER
ASSIGNMENT DIVISION
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Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

3. Nature of conveyance:

☐

Assignment

☐

Merger

☐

Security Agreement

☒

Change of Name

☐

Other

8/16/2002

Execution Date:

2. Name and address of receiving party(ies):

Name: NEON Enterprise Software, Inc.

Internal Address: _____

Street Address: 14100 Southwest Freeway

Suite 400

City: Sugarland State: TX Zip: 77478Additional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is: _____

A. Patent Application No.(s) 10/036,815

B. Patent No.(s) _____

Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Michael P. AdamsInternal Address: Winstead Sechrest & Minick P.C.

P.O. Box 50784

Street Address: _____

City: Dallas State: TX Zip: 752016. Total number of applications and patents involved: 17. Total fee (37 CFR 3.41).....\$ 40.00☒ Enclosed☐ Authorized to be charged to deposit account

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Michael P. Adams

Name of Person Signing

Signature

June 29, 2004

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DOCUMENT NO.: Austin 253775

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**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF**

PEREGRINE/BRIDGE TRANSFER CORPORATION

PEREGRINE/BRIDGE TRANSFER CORPORATION (the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "GCL"), in order to amend its Certificate of Incorporation pursuant to Section 242 of the GCL, certifies as follows:

1. The name of the Corporation is Peregrine/Bridge Transfer Corporation. The Corporation's original Certificate of Incorporation was filed with the Secretary of State of Delaware on November 1, 1995.

2. Pursuant to the applicable provisions of Section 242 of the GCL, the Board of Directors of the Corporation, by Unanimous Written Consent dated as of August 16, 2002, duly adopted a resolution setting forth the following amendment to the Corporation's Certificate of Incorporation and declaring such amendment advisable.

3. The sole stockholder of the Corporation, pursuant to the provisions of Section 228 of the GCL, by Written Consent dated as of August 16, 2002, duly adopted such amendment.

4. The authorized capital of the Corporation shall be increased from 1,000 shares of common stock, \$0.001 par value per share, to 11,000 shares of common stock, \$0.001 par value per share, by reason of this amendment.

5. Article 1 of the Certificate of Incorporation of the Corporation is amended to read in its entirety as follows:

ARTICLE 1

The name of the Corporation is NEON Enterprise Software, Inc. (the "Corporation").

6. Article 4 of the Certificate of Incorporation of the Corporation is amended to read in its entirety as follows:

ARTICLE 4

The Corporation is authorized to issue one class of shares to be designated Common Stock. The total number of shares of Common Stock this Corporation shall have the authority to issue is 11,000, with par value of \$0.001 per share.

7. Article 5 of the Certificate of Incorporation of the Corporation is amended to read in its entirety as follows:

ARTICLE 5

The name and mailing address of the agent for service of process for the Corporation are as follows:

Wayne E. Webb Jr.
NEON Enterprise Software, Inc.
12680 High Bluff Dr., Suite 200
San Diego, CA 92130

* * *

Peregrine/Bridge Transfer Corporation has caused this Certificate of Amendment to be executed by its duly authorized officer as of August 16, 2002.

PEREGRINE/BRIDGE TRANSFER CORPORATION

By: 

James Bradford Poynter
Chief Financial Officer and Secretary

/